



Claimant also challenges the Judge's appointment of Dr. Donald Mead as a neutral physician and the doctor's opinions should not be considered as the doctor is not truly neutral. In short, claimant argues he is entitled to a 15 percent permanent partial disability, 1 week of temporary total disability compensation, and medical compensation.

Respondent argues claimant's heat stress incident did not arise out of and in the course of employment and therefore the ALJ's Award should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After considering the entire record, the parties' stipulations and arguments, the Board makes the following findings of fact and conclusions of law:

On August 14, 2007, claimant experienced a heat-related incident at work, which he contends continues to cause him headaches, problems sleeping, memory difficulties, fatigue, and nausea.<sup>1</sup> This was not the first time, however, that claimant had experienced a heat-related incident. Approximately two weeks before, in late July 2007, claimant was taken to the Providence Medical Center after becoming lightheaded following an exercise session at home.

The principal issue in this claim is whether claimant has proven it is more likely true than not that his heat-related incident at work was caused or contributed by his work activities. The ALJ found claimant failed to satisfy that burden and the Board agrees.

Claimant is a truck driver who has worked for respondent since 1986. Before going to work on August 14, 2007, claimant exercised on a treadmill in his basement, which he reported he did three to five times per week.<sup>2</sup> To help him sweat, he heated his basement with a kerosene heater and wore a plastic exercise suit. Some of the medical records entered into the record indicate claimant reported that he exercised 90 minutes that morning before going to work. Those records also indicate that he reported heating the basement to 130 degrees, which he now denies. After exercising claimant showered, ate, and drove approximately 11 miles to respondent's, where he picked up his truck in Kansas City, Kansas. Claimant estimates that he arrived at the terminal at approximately 11 a.m.

The day was very hot and claimant ran the air conditioner in his truck as he pulled two trailers to the K-Mart distribution center in Lawrence, Kansas. Claimant estimates the trip took him approximately 50 minutes. Upon arriving at his destination, he climbed from the truck without problems and entered a guard shack. He then drove the truck to where

---

<sup>1</sup> R.H. Trans. at 42.

<sup>2</sup> *Ibid.* at 31.

he was to leave the trailers. Claimant indicated that as he was exiting the truck to disconnect the trailers he began experiencing cramps. He testified, in part:

Q. (Robert Wonnell) So you were experiencing cramping pain as you were walking back to dolly the trailer; is that correct?

A. (Claimant) Yes. All this hit me when I opened the door and started to climb down, but it didn't get just real, real severe until I started dollying my legs down.<sup>3</sup>

The above history is somewhat different than the one repeated by claimant's medical expert, Dr. Michael J. Poppa, in an October 25, 2007 medical report. In that report Dr. Poppa wrote, in part:

[Claimant] states on 8/14/07 he was driving his tractor-trailer with the air conditioning on but stated the cab of his truck "still felt real hot." [Claimant] states he was on his way to a delivery at Wal-Mart and when he finally arrived at Wal-Mart he began to unload his truck. He reports that every muscle in his body started cramping and he was sweating profusely. [Claimant] states, "It felt like I had a Charlie horse everywhere in my body." [Claimant] indicates he then laid down on the ground until an ambulance arrived at the scene.<sup>4</sup>

Dr. Poppa's report does not mention that claimant was disconnecting or dollying a trailer. Indeed, on page four of that medical report the doctor opined that claimant "sustained an aggravation of his pre-existing personal medical condition as a result of becoming overheated *while driving in the cab* of his over-the-road truck, which caused a material aggravation and worsening of his previous condition (rhabdomyolysis)."

Moreover, when claimant met with Dr. Donald T. Mead in August 2008, for the court-ordered independent medical evaluation, claimant failed to tell Dr. Mead about the symptoms he allegedly experienced while dollying the trailer. According to Dr. Mead, claimant advised that he was unable to do anything after exiting his truck.<sup>5</sup>

In addition to questions raised by claimant's diverse histories, the Board finds the greater weight of the medical evidence establishes that more probably than not claimant experienced heat exhaustion on August 14, 2007, that was more likely caused by his work out at home and personal physical condition. Dr. Mead practices occupational and environmental medicine at St. Francis Medical Center in Topeka, Kansas, and was selected by the ALJ to perform an independent medical evaluation as an unbiased

---

<sup>3</sup> *Ibid.* at 59.

<sup>4</sup> Poppa, Cl. Ex. 2 at 1.

<sup>5</sup> Mead Depo. at 36.

physician. Dr. Mead explained how claimant's cramping was likely caused by an electrolyte disturbance, which takes some time to develop.

If you were heat stressed, not to the point where you've driven up your blood – your core temperature above a critical level, but you're heat stressed, you're making a lot of sweat, you're losing a lot of sodium through your sweat. The kidneys try to hang onto as much sodium as they can, and they're fairly good at it, and they start getting rid of potassium to hold onto the sodium. And they can do that for a while, but once the sodium starts drifting down - or the potassium starts drifting down, they can't keep doing that forever. Then they start losing sodium again, and then the electrolytes go out of whack, and that's where the – hyponatremia is the main instigator for the cramps.<sup>6</sup>

The records from Lawrence Memorial Hospital, where claimant was taken on August 14, 2007, indicate claimant had low potassium, which also takes some time to develop.<sup>7</sup>

According to Dr. Mead, the symptoms from heat stress may take from minutes to hours to manifest themselves. Moreover, the doctor opined that claimant's heat stress on August 14, 2007, was more likely caused by his exercising in his plastic suit.<sup>8</sup>

The record includes the medical opinions of Dr. Eden Wheeler, respondent's medical expert, and of Dr. Michael J. Poppa, claimant's medical expert. Not surprisingly, Dr. Wheeler, who is a physical medicine and rehabilitation specialist, opined that claimant's August 2007 incident was not related to claimant's work. Not unexpectedly, Dr. Poppa, who is an occupational medicine specialist, testified that claimant's work, which included dollying down the trailer, directly caused claimant's medical condition on August 14, 2007, and aggravated claimant's previous conditions.

The Board agrees with the ALJ that Dr. Mead's opinions are the most persuasive. They are credible and supported by the evidence.

Claimant has challenged the ALJ's appointment of Dr. Mead to examine and evaluate claimant as an unbiased expert. Claimant argues Dr. Mead should not be considered neutral as he regularly treats injured workers for employers at the hospital where he is employed. The Workers Compensation Act empowers the ALJ to select neutral physicians to examine and evaluate injured workers. K.S.A. 44-516 provides:

---

<sup>6</sup> Mead Depo at 25.

<sup>7</sup> *Ibid.* at 49.

<sup>8</sup> *Ibid.* at 17.

In case of a dispute as to an injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

In addition, K.S.A. 44-510e provides that a ALJ may appoint an independent doctor when there are at least two medical opinions that disagree as to functional impairment.

There is no question the ALJ had the authority to appoint a neutral physician to examine and evaluate claimant. Claimant argues Dr. Mead practices occupational medicine and, therefore, the doctor would be inclined to favor employers and their insurance carriers, who are the sources of his patients. That argument goes to the weight that should be given the doctor's opinions rather than to admissibility. Consequently, the Board denies claimant's request to strike Dr. Mead's medical report and deposition from the record.

In conclusion, after considering the entire record, the Board finds claimant has failed to prove that the heat stress he experienced on August 14, 2007, arose out of his employment with respondent. Accordingly, the Board affirms the ALJ's conclusion that claimant should be denied benefits in this claim.

#### **AWARD**

**WHEREFORE**, the Board affirms the May 4, 2009, Award Upon Remand of Administrative Law entered by Judge Brad E. Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January 2010.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Keith L. Mark, Attorney for Claimant  
Samantha Benjamin-House, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge